

LEGISLATURE OF NEBRASKA
NINETY-SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 347

Introduced by Robak, 22

Read first time January 8, 2001

Committee: General Affairs

A BILL

1 FOR AN ACT relating to the Nebraska Liquor Control Act; to amend
2 section 53-180.07, Reissue Revised Statutes of Nebraska,
3 and section 53-1,104, Revised Statutes Supplement, 2000;
4 to change provisions relating to prosecutions for sale of
5 liquor to a minor and retail license suspension; and to
6 repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 53-180.07, Reissue Revised Statutes
2 of Nebraska, is amended to read:

3 53-180.07. (1) In any prosecution of or any proceeding
4 against any licensee or any employee of a licensee charged with
5 having made a sale of alcoholic liquor to a minor, proof of the
6 following shall be an absolute defense to the charge:

7 ~~(1)(a)~~ (a)(i) The purchaser falsely represented in
8 writing and supported with other documentary proof that he or she
9 was of legal age to purchase alcoholic liquor;

10 ~~(b)~~ (ii) The appearance of such purchaser was such that
11 an ordinary and prudent person would believe that such appearance
12 conformed to any documentary description of appearance presented by
13 the purchaser; and

14 ~~(c)~~ (iii) The seller was acting in good faith, in
15 reliance upon the written representation, other documentary
16 evidence, and the appearance of the purchaser, and in the belief
17 the purchaser was of legal age to make such purchase; or

18 ~~(2)~~ (b) The seller was acting with the knowledge of and
19 in cooperation with a duly authorized law enforcement officer.

20 (2) If a licensee or an employee of a licensee is charged
21 with having made a sale of alcoholic liquor to a minor, the minor
22 involved in the purchase or attempted purchase shall be (a) charged
23 for such violation of the Nebraska Liquor Control Act as is
24 appropriate or (b) referred to the juvenile court or the county
25 court sitting as a juvenile court for appropriate proceedings under
26 the Nebraska Juvenile Code. If such minor is not charged or
27 referred, if such minor is charged or referred and acquitted, or if
28 such charge is dismissed, all charges and proceedings against the

1 licensee or employee charged with having made such sale shall be
2 dismissed with prejudice.

3 (3) Subsection (2) of this section shall not apply to (a)
4 any sale made with the knowledge of and in cooperation with a duly
5 authorized law enforcement officer or (b) any action in which the
6 minor is released to a pretrial diversion program for treatment or
7 education under the direction of any law enforcement agency, the
8 juvenile court, or the county court sitting as a juvenile court
9 when the action results in charges not being filed or charges being
10 dismissed upon completion of the program.

11 Sec. 2. Section 53-1,104, Revised Statutes Supplement,
12 2000, is amended to read:

13 53-1,104. (1) Any licensee which sells or permits the
14 sale of any alcoholic liquor not authorized under the terms of such
15 license on the licensed premises or in connection with such
16 licensee's business or otherwise shall be subject to suspension,
17 cancellation, or revocation of such license by the commission.

18 (2) When an order suspending a retail license to sell
19 alcoholic liquor becomes final, the licensee may elect to pay a
20 cash penalty to the commission in lieu of suspending sales of
21 alcoholic liquor for the designated period if such election is not
22 prohibited by order of the commission. Except as otherwise
23 provided in subsection (3) of this section, for the first such
24 suspension for any licensee, the penalty shall be fifty dollars per
25 day, and for a second or any subsequent suspension, the penalty
26 shall be one hundred dollars per day.

27 (3)(a) For a second suspension for violation of section
28 53-180 or 53-180.02 occurring within four years after the date of

1 the first suspension, the commission, in its discretion, may order
2 that the licensee be required to suspend sales of alcoholic liquor
3 for a period of time not to exceed forty-eight hours and that the
4 licensee may not elect to pay a cash penalty. The commission may
5 use the required suspension of sales of alcoholic liquor penalty
6 either alone or in conjunction with suspension periods for which
7 the licensee may elect to pay a cash penalty. For purposes of this
8 subsection, second suspension for violation of section 53-180 shall
9 include suspension for a violation of section 53-180.02 following
10 suspension for a violation of section 53-180 and second suspension
11 for violation of section 53-180.02 shall include suspension for a
12 violation of section 53-180 following suspension for a violation of
13 section 53-180.02;

14 (b) For a third or subsequent suspension for violation of
15 section 53-180 or 53-180.02 occurring within four years after the
16 date of the first suspension, the commission, in its discretion,
17 may order that the licensee be required to suspend sales of
18 alcoholic liquor for a period of time not to exceed fifteen days
19 and that the licensee may not elect to pay a cash penalty. The
20 commission may use the required suspension of sales of alcoholic
21 liquor penalty either alone or in conjunction with suspension
22 periods for which the licensee may elect to pay a cash penalty.
23 For purposes of this subsection, third or subsequent suspension for
24 violation of section 53-180 shall include suspension for a
25 violation of section 53-180.02 following suspension for a violation
26 of section 53-180 and third or subsequent suspension for violation
27 of section 53-180.02 shall include suspension for a violation of
28 section 53-180 following suspension for a violation of section

1 53-180.02; and

2 (c) For a first suspension based upon a finding that a
3 licensee or an employee or agent of the licensee has been convicted
4 of possession of a gambling device on a licensee's premises in
5 violation of sections 28-1107 to 28-1111, the commission, in its
6 discretion, may order that the licensee be required to suspend
7 sales of alcoholic liquor for thirty days and that the licensee may
8 not elect to pay a cash penalty. For a second or subsequent
9 suspension for such a violation of sections 28-1107 to 28-1111
10 occurring within four years after the date of the first suspension,
11 the commission shall order that the license be canceled.

12 (4) For any licensee which has no violation for a period
13 of four years consecutively, any suspension shall be treated as a
14 new first suspension.

15 (5) No suspension under this section shall be for a
16 period exceeding five days for any violation involving the joint
17 efforts of law enforcement, other governmental or private agencies
18 or entities, and other persons, by which efforts the licensee is
19 induced to commit the violation on which the order of suspension is
20 based.

21 (6) The election provided for in subsection (2) of this
22 section shall be filed with the commission in writing one week
23 before the suspension is ordered to commence and shall be
24 accompanied by payment in full of the sum required by this section.
25 If such election has not been received by the commission by the
26 close of business one week before the day such suspension is
27 ordered to commence, it shall be conclusively presumed that the
28 licensee has elected to close for the period of the suspension and

1 any election received later shall be absolutely void and the
2 payment made shall be returned to the licensee. The election shall
3 be made on a form prescribed by the commission. All funds received
4 under this section shall be remitted to the State Treasurer for
5 credit to the temporary school fund as defined in section 79-101.

6 Sec. 3. Original section 53-180.07, Reissue Revised
7 Statutes of Nebraska, and section 53-1,104, Revised Statutes
8 Supplement, 2000, are repealed.